

APPEAL NO. 030975
FILED JUNE 13, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on March 25, 2003. The hearing officer determined that the respondent (claimant) sustained a compensable injury to his right knee on _____, and that he had disability beginning on _____, and continuing through the date of the hearing. The appellant (self-insured) appealed, and the file does not contain a response from the claimant.

DECISION

Affirmed.

It is undisputed that the claimant, a city employee, had sustained a prior left knee injury in (prior date of injury). The claimant was under continuing care for that injury. The claimant testified that on _____, he sustained a right knee injury when his left leg gave way while he was attempting to climb onto the back of a sanitation truck, causing him to fall and strike his right knee on the truck's rear step and then on the ground. The claimant saw the city's medical provider for his right knee the same day. Medical records from this doctor's visit are in evidence, and they indicate that the claimant had right knee contusions and abrasions. The records further reflect that the claimant was advised to follow-up with the doctor who had been treating him for his left knee injury and that the claimant was placed on restricted duty. The claimant testified that he has not yet been released to return to work. The self-insured argued that the claimant did not sustain a compensable injury on the date in question, but that the claimant actually had suffered a bilateral knee injury in (prior date of injury), and he was merely suffering from the continuing effects of that injury. In the alternative, the self-insured argued that the right knee injury is a direct and natural result of the left knee injury, and therefore it is not a new injury so there is no new disability.

There was conflicting evidence presented as to whether the claimant sustained a new injury or whether his complaints were a continuation, or causally related to, his previous injury. The claimant had the burden to prove that he sustained new damage or harm to the physical structure of his body, arising out of and in the course and scope of his employment. Texas Workers' Compensation Appeal No. 992486, decided December 29, 1999. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). In view of the evidence presented, we cannot conclude that the hearing officer's determinations are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The self-insured's appeal of the disability issue is mainly premised on the contention that the claimant did not sustain a compensable injury, therefore the claimant did not have disability. In the alternative, the self-insured argued that the claimant failed to distinguish disability due to the old injury versus the claimed new injury. The hearing officer commented that the claimant's compensable right knee injury "is a cause of claimant's disability." We conclude that the hearing officer's determination is supported by the evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, supra.

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**CITY
(ADDRESS)
(CITY), TEXAS (ZIP CODE).**

Thomas A. Knapp
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Robert W. Potts
Appeals Judge